

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

Case No.: CR 02-399-JO

Date of Proceeding: 2/25/03

Presiding Judge: ROBERT E. JONES

Courtroom Deputy: Cindy Schultz, telephone 503-326-8340

Reporter: Nancy Walker Tape No: _____

AUSA: Charles F. Gorder

DOCKET ENTRY:

RECORD OF HEARING: (SEE ATTACHED)

DEFENDANT

COUNSEL

(1) JEFFREY LEON BATTLE

[] Present [] O/R [] Bond [] Custody

(1) KRISTEN L. WINEMILLER

[] Present [] Appointed [] Retained

(2) PATRICE LUMUMBA FORD

[] Present [] O/R [] Bond [] Custody

WHITNEY PATRICK BOISE
(2) _____
[] Present [] Appointed [] Retained

(3) AHMED IBRAHIM BILAL

[] Present [] O/R [] Bond [] Custody

DANIEL L. FEINER
(3) _____
[] Present [] Appointed [] Retained

(4) MUHAMMAD IBRAHIM BILAL

[] Present [] O/R [] Bond [] Custody

ANDREW BATES
(4) _____
[] Present [] Appointed [] Retained

(5) _____
[] Present [] O/R [] Bond [] Custody

(5) _____
[] Present [] Appointed [] Retained

(6) OCTOBER MARTINIQUE LEWIS

[] Present [] O/R [] Bond [] Custody

(6) JOHN S. RANSOM

[] Present [] Appointed [] Retained

cc: [] Chambers [] Probation Office
[] Counsel of Record [] Pretrial Services Office
[] Jury Clerk [] U.S. Marshal's Office

Document No: _____
CRIMINAL MINUTES

RECORD OF HEARING:

1. Counsel for defendant Ford withdraws his motion (# 132) to withdraw as counsel.
2. Ruling on defendant Lewis' motion (# 127) for severance is deferred pending a possible superseding indictment. Lewis' custody status will also be reviewed at that time.
3. Parties to confer concerning proposed discovery and motion schedule and submit proposed schedule to court.
4. Defendants' motions for discovery (# 121, # 122, # 124, # 125, # 126, # 131) are ruled on as follows:

Defense request	Prosecution response	Court ruling
1. All disclosure required by Rule 16, including redacted material.	1. Agreed as to genuinely Rule 16 material; opposed as to redacted material gratuitously provided as early <i>Jencks</i> .	1. Government objection sustained; ordered as agreed.
2. Rule 12(d) notice of intent to use evidence discoverable under Rule 16.	2. Agreed, to the extent provided by the rule; offer to provide exhibit list well in advance of trial.	2. Ordered as agreed.
3(a). All documents relating to cooperating witnesses.	3(a). Agreed, to extent provided by <i>Brady/Giglio</i> , <i>Jencks</i> and Rule 16. Will endeavor to provide previously undisclosed impeachment material, if any exists, at least 2 weeks before trial.	3(a). Ordered as agreed; disclosure date to be determined by court if parties cannot agree.
3(a)(i). Reports from DEA, ATF and other law enforcement agencies pertaining to previous work performed by alleged CW and/or CW's spouse.	3(a)(i). Not subject to disclosure unless <i>Jencks</i> , or <i>Brady/Giglio</i> (see 3(a)). Internal memos not discoverable under Rule 16(a)(2) unless <i>Giglio</i> .	3(a)(i). Government to disclose previous work, if any, performed by alleged CW, but not CW's spouse.
3(a)(ii) and (iii). Video/audio tapes "used" by CW; access to or description of audio- visual equipment used to play tapes.	3(a)(ii) and (iii). Agreed to extent provided by Rule 16, <i>Jencks</i> and <i>Brady/Giglio</i> ; otherwise opposed; no showing of materiality of tapes, let alone VCRs which may have played tapes.	3(a)(ii) and (iii). Request for audio/video tapes granted; equipment request withdrawn.

3(a)(iv). Access to "body wire" equipment.	3(a)(iv). Opposed; precise equipment used is law enforcement sensitive and privileged; defense may challenge admissibility of "body wire" recordings w/out access to equipment.	3(a)(iv). Denied.
3(a)(v). Documents pertaining to CW recording proceedings in any mosque.	3(a)(v). Recordings to be provided to extent provided by Rule 16. Otherwise opposed as not independently discoverable. Internal documents and memos not discoverable under Rule 16(a)(2).	3(a)(v). Government will provide recordings to court for in camera review accompanied by brief re: discoverability.
3(b). All documents reflecting contact between defendants & any law enforcement or regulatory officer, foreign or domestic, at any point in time.	3(b). Agreed, to extent provided by Rule 16, <i>Jencks</i> , or <i>Brady/Giglio</i> . Otherwise, opposed as overly broad "fishing expedition;" necessarily includes much non-pertinent info.	3(b). Ordered as agreed; limited to two years.
3(c). Personnel files of law enforcement officers; <i>Henthorne</i> material.	3(c). Agreed for federal agents per 9th Circuit rule under <i>Jennings</i> ; opposed for state/local officers per 9th Circuit rule under <i>Dominguez-Villa</i> .	3(c). Government objection sustained; ordered as agreed.
3(d). All grand jury minutes, records, transcripts, etc.	3(d). Agreed, as to transcripts & related exhibits, to extent provided under <i>Jencks</i> and <i>Brady/Giglio</i> . Opposed, as to other records; grand jury secrecy applies, absent showing of "particularized need;" investigation is ongoing.	3(d). Ordered as agreed. Government to submit to court the list filed in clerk's office.
3(e). Witnesses' notes.	3(e). Agreed, to extent provided by <i>Jencks</i> and <i>Brady/Giglio</i> . Will produce at trial.	3(e). Ordered as agreed.
4. Defendants' and witnesses' statements.	4. Agreed, as to defendants' statements, to extent provided by Rule 16. Agreed, as to witnesses' statements, to extent provided by <i>Jencks</i> and <i>Brady/Giglio</i> .	4. Ordered as agreed.

5. Physical & documentary evidence related to case.	5. Agreed to extent provided by Rule 16 & <i>Brady/Jencks</i> . This has already been made available to and accessed by defense teams. Will be unavailable while electronically scanned. Will thereafter provide in electronic format & continue to make originals available, if needed.	5. Ordered as agreed; electronically scanned material due within 30 days.
6. Co-conspirator's statements and related information.	6. Generally opposed as beyond Rule 16; agreed to extent <i>Brady/Jencks</i> implicated.	6. Issue to be briefed; briefs due within 60 days.
7. Physical & documentary evidence.	7. See item #5 above.	7. Moot.
8. Prosecution team does not understand.	8. Not understood.	8. Withdrawn.
9. Scientific tests.	9. Agreed, to extent provided by Rule 16(a)(D) or <i>Brady/Giglio</i> .	9. Ordered as agreed.
10(a). 404(b) evidence.	10(a). Agreed per rule.	10(a). Moot.
10(b). Criminal records of government witnesses.	10(b). Agreed. Will provide at or before trial per rules.	10(b). Ordered as agreed.
10(c-k). <i>Giglio</i> information.	10(c-k). Agreed. Previously undisclosed material, if any, will be provided per item #3(a), above.	10(c-k). Ordered as agreed.
11. Expert witness information.	11. Agreed, to extent provided by Rule 16(a)(1)(G).	11. Ordered as agreed. Government to submit information within 60 days; defendants' response due 30 days later.
11(b). Tests, physical & mental examinations of witnesses.	11(b). Agreed, to extent provided by <i>Giglio</i> .	11(b). Moot.
11(c). Tests, experiments, comparisons.	11(c). Agreed. See item #9, above.	11(c). Ordered as agreed.

12. Search & arrest warrants & related information.	12. Generally agreed; affidavits, warrants, returns & relevant reports already provided. Computers will be mirrored and provided to defense. Will notify defense if underlying data concerning search techniques exist, and whether government is opposed to disclosure. Otherwise opposed as to internal memoranda per Rule 16(a)(2). Opposed as to 2703 orders & applications, and subpoenas; no authority provided.	12. Ordered as agreed. Government opposition to 2703 orders & applications, and subpoenas moot.
13. Electronic surveillance, video & audio recordings.	13. Agreed to extent provided by Rule 16, <i>Jencks</i> and <i>Brady/Giglio</i> .	13. Ordered as agreed.
13(a). Applications & orders for pen registers and traps & traces under 18 U.S.C. §§ 3121-3127.	13(a). Opposed; no authority provided.	13(a). Denied.
13(b). Telephone recordings and records.	13(b). Agreed, to extent provided by Rule 16, <i>Jencks</i> and <i>Brady/Giglio</i> . Will also provide transcripts where they exist or are produced in future. Untranscribed material will be furnished in electronic form only.	13(b). Ordered as agreed.
13(c). Recorded conversations.	13(c). See item #13(b).	13(c). Ordered as agreed.
13(d). Telephone toll records.	13(d). See 13(b); will provide records to be used in govt's case-in-chief.	13(d). Ordered as agreed.
13(e). Tracking devices.	13(e). Agreed to extent provided by Rule 16, <i>Jencks</i> or <i>Brady/Giglio</i> .	13(e). Ordered as agreed.
13(f). E-mails.	13(f). Agreed.	13(f). Ordered as agreed.
13(g). Title III wiretap material.	13(g). None exists.	13(g). Moot.

13(h). FISA applications and orders.	13(h). Opposed. Will ask FISC to provide to court <i>in camera</i> , <i>ex parte</i> , per 50 U.S.C. § 1806(f), upon filing of motion to suppress by defendant(s) and A.G. assertion of privilege. Defendants have been, and will continue to be, provided with declassified FISA-derived info, as it becomes declassified. Any classified, FISA-derived info which is discoverable will require CIPA and FISA protection and defense team clearances.	13(h). Government position sustained.
13(i). Applications, orders and materials related to ISP-derived information.	13(i). Agreed as to material acquired pursuant to 18 U.S.C. § 2703(d) or by warrant. Agreed as to warrant affidavits and warrants. Opposed as to applications and orders under 2703(d); no authority provided.	13(i). Ordered as agreed. Government opposition to 2703(d) orders withdrawn.
14. Destroyed evidence/material relating to case.	14. Prosecution team unaware of anything in this category; defense team invited to tender specific request.	14. Moot.
15. Information/material relating to U.S. persons or entities assisting Taliban or Afghanistan.	15. Opposed; no showing of materiality. Fishing expedition.	15. Government objection sustained; discovery denied.
16. Government inducements tending to show entrapment; specific request for info relating to agents posing as members of auto theft task force.	16. Agreed, but prosecution team unaware of anything in this category. Events in indictment largely occurred before govt. awareness. Defense teams invited to tender specific request. "Auto theft task force" materials already provided.	16. Ordered as agreed.
17. Evidence of inducing accusations or fabricating evidence.	17. Agreed to extent provided by <i>Brady/Giglio</i> and perceived by prosecution team. Defense teams invited to tender specific request(s) backed with statement of materiality.	17. Moot.

18. <i>Brady/Giglio</i> .	18. Agreed. To extent such material may be unperceived, defense teams invited to tender specific request(s) backed with statement of materiality.	18. Ordered as agreed.
19. Guantanamo detainees.	19. Opposed; immaterial; "fishing expedition."	19. Government objection sustained; discovery denied.
20. Account information from financial institutions, phone companies, ISPs, etc., and method of acquisition.	20. Agreed to extent provided by Rule 16, <i>Jencks</i> , and <i>Brady/Giglio</i> . Otherwise opposed; no authority provided.	20. Ordered as agreed.
21. Information from government agencies; specific request for military, visa and motor vehicle records.	21. See, item 20. Military records already provided. Govt. unaware of visa applications to US govt.; opposed as to foreign visas not in govt's possession. Agreed as to DMV records to extent provided by Rule 16.	21. Ordered as agreed.
22. Surveillance photos of defendants & their residences.	22. Agreed.	22. Ordered as agreed; originals to be submitted to defense counsel and returned.
23. List of names & addresses of witnesses whom govt. will not call at trial, including intelligence sources; names & addresses of persons w/ info about whereabouts of fugitive co-defendant Al Saoub.	23. Agreed as to percipient witnesses; opposed as to secondary and/or purely intelligence "witnesses". Opposed as to witnesses w/ knowledge of Al Saoub's whereabouts (ongoing investigation).	23. Government objection sustained; ordered as agreed.
24. <i>Jencks</i> material.	24. Agreed to extent provided by <i>Jencks</i> . Agreed as to full disclosure 2 weeks before trial if all defense teams reciprocally agreed to pretrial disclosure under FRE 26.2.	24. Ordered as agreed; material to be provided in a timely manner before trial.
25. Logs, surveillance records, photos, etc.	25. Agreed to extent provided by Rule 16, <i>Jencks</i> or <i>Brady/Giglio</i> .	25. Ordered as agreed.

26. Mail covers and openings.	26. No mail openings occurred to knowledge of prosecution team except, perhaps, during Rule 41 search warrants (info already provided). Will provide mail cover data.	26. Ordered as agreed.
27. Documentary exhibits.	27. Agreed.	27. Ordered as agreed.
28. Tax information.	28. Already provided as to defendants. Opposed as to witnesses.	28. Government to produce tax information re: CW, not tax return.
29. Financial reviews.	29. Agreed to extent provided by Rule 16, <i>Jencks</i> or <i>Brady/Giglio</i> . Opposed to extent internal govt. work product or memo(s) subject to Rule 16(a)(2).	29. Government objection sustained; ordered as agreed.
30. Court applications for "intrusions into privacy."	30. Agreed as to Rule 41 search warrant materials. Otherwise opposed; no authority provided.	30. Ordered as agreed.
31. Identification methods.	31. Agreed to extent involving testifying witnesses, or may constitute <i>Brady/Giglio</i> .	31. Ordered as agreed.
32. Ministerial grand jury records.	32. Opposed; no showing of "particularized need."	32. Moot.
33. Grand jury transcripts.	33. Agreed to extent provided by <i>Jencks</i> or <i>Brady/Giglio</i> . Otherwise opposed; no showing of "particularized need."	33. Ordered as agreed.
34. Law enforcement personnel files.	34. See item #3(c), above.	34. See item #3(c), above.
35. Time lines and case summaries; specific request for timing of military involvement in Afghanistan.	35. Agreed, to extent provided by Rule 16, <i>Jencks</i> or <i>Brady/Giglio</i> . Opposed to extent internal memoranda or work product per Rule 16(a)(2).	35. Ordered as agreed.
36. Grand jury Rule 6(e) disclosure lists.	36. Opposed. See item #3(d), above.	36. See item #3(d), above.

37. Documents associating defendants w/ Taliban or Al Qaida.	37. Agreed to extent provided by Rule 16, <i>Jencks</i> or <i>Brady/Giglio</i> . Opposed, to extent internal memoranda or work product per Rule 16(a)(2).	37. Ordered as agreed.
38. Documents establishing defendants' awareness of war in Afghanistan.	38. Agreed to extent provided by Rule 16, <i>Jencks</i> or <i>Brady/Giglio</i> . Opposed to extent internal memoranda or work product per Rule 16(a)(2).	38. Ordered as agreed.